

JOHN SLOAN

IBLA 80-247

Decided May 6, 1980

Appeal from decision of the California State Office, Bureau of Land Management, holding the Paradise No. 1 placer mining claim abandoned and void. CA MC 60281.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing in a BLM District Office rather than the designated BLM State Office is not sufficient.

APPEARANCES: John Sloan, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

John Sloan appeals the decision of the California State Office, Bureau of Land Management (BLM), dated December 26, 1979, declaring the Paradise No. 1 placer mining claim abandoned and void.

The decision stated that the notice for the above-named mining claim is returned, together with the service fee, since it was not

filed on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and the regulations in 43 CFR 3833.1-2(a). The decision indicated that failure to file within the time limits shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void.

On appeal, appellant states that he mailed the documents to the Redding District Office where they were date stamped October 22, 1979. The District Office forwarded the documents to the State Office in Sacramento where they were received on October 24, 1979. Appellant further states that he became aware of the filing regulations by reading a poster distributed by BLM and that neither the poster nor the regulation state specifically where the material should be mailed.

[1] Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, excluding lands within units of the National Park System established before September 28, 1976, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section shall be filed. Where the claim so recorded lies within a unit of the National Park System, a copy of the documents filed shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

The above-quoted regulation notes that "file" shall mean being received and date stamped by the proper BLM office. The "proper BLM

office" is defined in the regulations at 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). The latter section states in turn that the office having jurisdiction over lands located in California is BLM's California State Office in Sacramento. The documents had to be received and date stamped by the California State Office by October 22, 1979, in order to be filed timely. C. F. Linn, 45 IBLA 156 (1980). The documents were not date stamped by the State Office until October 24, 1979. Failure to comply must result in a conclusive finding that the claim has been abandoned and is void. 1/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

1/ There is no information that appellant filed evidence of annual assessment work or a notice of intention to hold the mining claim as required by 43 CFR 3833.2-1(a). Failure to file the documents required by 43 CFR 3833.2-1 would also constitute an abandonment of the mining claim.

